

# ISSUE BRIEF

## SENATE POLICY DEVELOPMENT AND RESEARCH OFFICE

PREPARED IN CONJUNCTION WITH THE SENATE REPUBLICAN POLICY COMMITTEE

### The Pennsylvania Race Horse Development and Gaming Act—2008 Update

On July 5, 2004, Governor Rendell signed into law Act 71 of 2004, the Pennsylvania Race Horse Development and Gaming Act, authorizing the use of slot machines as a source of new revenue to support, among other initiatives, real property tax relief, economic development and tourism, horse racing industry development, a volunteer fire company grant program, and a gambling addiction program. Act 71 provided for the establishment of an independent Pennsylvania Gaming Control Board, which was tasked to oversee the creation of a slots casino industry and was granted jurisdiction over every aspect of the authorization, operation, and regulation of slot machines at racetracks and other authorized venues.

The Board is comprised of seven voting members including three gubernatorial appointees (Chairman Mary D. Colins, Sanford Rivers, and James B. Ginty), an individual appointed by the President Pro Tempore of the Senate (Kenneth McCabe), an individual appointed by the Speaker of the House (Jeffrey W. Coy), and one each by the minority leaders of the Senate (Ray Angeli) and House of Representatives (Gary A. Sojka). The Secretary of Revenue, the Secretary of Agriculture and the State Treasurer serve as nonvoting ex-officio members. On June 6, 2008, the Board accepted the resignation of its first executive director, Anne LaCour Neeb, and appointed Chief Counsel Frank T. Donaghue to serve as Acting Executive Director during a nationwide search for a new executive director. In addition, David Kwait, Director of the Board's Bureau of Investigations and Enforcement retired effective December 5, 2008. Currently the Board employs 271 employees (including the Commissioners) with offices in Harrisburg, Pittsburgh, Philadelphia, and Scranton as well as at the seven currently operating casinos.

The Act authorizes up to twelve limited casino licenses for the operation of slot machines, including up to seven at either licensed thoroughbred or harness racing tracks (Category 1 licenses); no more than five at non-track stand alone facilities (Category 2 licenses), as well as two additional resort hotel gaming licenses (Category 3 licenses). In all, Act 71 provides for up to 61,000 slot machines at fourteen betting venues, but as of December 31, 2008 only 16,712 were in operation at seven locations.

#### *Category 1 Licenses*

Permanent licenses have been granted for six of seven Category 1 applicants, each of which may eventually operate a maximum of 5,000 slot machines at existing horse or harness racing facilities. Six racinos are currently operational with numbers in parentheses indicating the number of slot machines in operation on December 31, 2008:

- Harrah's Chester Downs in Chester, Delaware County (2,755),
- Monhegan Sun at Pocono Downs near Wilkes-Barre in Luzerne County (2,479),
- Philadelphia Park Casino in Bucks County (2,912),
- Hollywood Casino at Penn National near Harrisburg in Dauphin County (2,227),
- Presque Isle Downs just outside Erie in Erie County (2,000), and
- The Meadows Racetrack and Casino in Washington County (1,825).

The seventh and final racino, Valley View Downs, is expected to be built in Mahoning Township, Lawrence County at a site midway between New Castle and the Ohio line. On September 5, 2007, the state Harness Racing Commission awarded its final harness racing license to Centaur Inc. of Indianapolis, which has also applied for a state gaming license in order to build a \$455 million complex including a mile long harness track, a slots casino

with up to 3,000 slot machines, and a hotel. In August 2008, the Harness Racing extended the firm's harness racing license for another year, recognizing that progress on the site had been stymied by the length of extensive background investigations and by the credit crunch. Centaur's application for a gaming license is pending before the Board, and the company is hoping to open the facility sometime in 2010.

### *Category 2 Licenses*

Act 71 requires that two licenses in this category must be located within Philadelphia, one in Pittsburgh, and two in tourism-enhanced locations across the state. Five permanent Category 2 licenses have been granted for stand alone slots facilities, each of which may also eventually operate a maximum of 5,000 slot machines, but only Mount Airy Casino Resort, located in the Poconos at the Mount Airy Resort in Paradise Township, Monroe County is up and running with 2,514 slots in operation at the end of December 2008.

On January 30, 2008, then Executive Director Anne Neeb issued an emergency suspension of the Principle License of Louis A. DeNaples, sole owner of the Mount Airy Casino Resort after De Naples was charged with four counts of perjury by the Dauphin County District Attorney. Subsequently, on February 5, 2008, the Board agreed to continue the suspension and to appoint both a trustee (retired Shippensburg University President, Dr. Anthony F. Ceddia) and accountant (Mark M. Gleason, a partner in Gleason Certified Public Accountants and Consultants of Pittsburgh) to oversee the continued operation of Mount Airy Resort.

Other approved Category 2 licenses awarded by December 2006 included:

- HSP Gaming, LP--The *SugarHouse Casino*, which will be located along the Delaware River near the Girard Avenue exit of Interstate 95 in Philadelphia,
- Philadelphia Entertainment & Development Partners, LP--*Foxwoods Casino Philadelphia*, which will be located in South Philadelphia along the Delaware River; however, the Foxwoods project, could be moved from South Columbus Boulevard to the Gallery at Market East in Center City.
- PITG Gaming, LLC--The *Majestic Star Casino*, which will be located on the north shore of Pittsburgh west of Heinz Field and the Carnegie Science Center, and
- Sands Bethworks Gaming, LLC--The *Sands Bethworks Casino*, which will be located at the former Bethlehem Steel Company plant in Bethlehem, Northampton and Lehigh Counties.

In August 2008, the Board approved a request to restructure the financing and ownership interests of the partially constructed casino in Pittsburgh. After Don Barden's PITG ran into financing trouble, the Board approved transfer of the license to Chicago developer, Neil Bluhm's ownership group, Holdings Acquisition Co., Ltd., who will now hold the license. Bluhm's company has joined with Barden to take over financing of the project and ensure the completion of the facility. Along with the licensing change, the name has switched, too, from the Majestic Star to the Rivers Casino, which is projected to open in August 2009. Meanwhile, the Sands Casino is projected to open by the end of June 2009, but Bethlehem city officials believe it could open as early as Memorial Day. On the other hand, development of both the SugarHouse Casino and the Foxwoods Casino Philadelphia has been stymied by vigorous local opposition. Lawsuits filed by opponents of gambling, residents of neighborhoods in which casinos will be located, and losers in the application process combined with archaeological dig requirements have slowed the opening of the two Philadelphia casinos. On January 9, 2009, investors in the SugarHouse Casino, frustrated by delays and roadblocks from the Nutter administration, at last petitioned the Pennsylvania Supreme Court to appoint a special master to settle any current or future disputes with the City of Philadelphia claiming the city was ignoring a state Supreme Court order of December 3, 2007, that required it to promptly process the permits SugarHouse needs to start construction.

### *Category 3 Licenses*

With respect to Category 3 licenses, Act 71 permits the Board to award two licenses, each permitting the operation of up to 500 slot machines, to a well-established resort hotel in order to establish an additional patron amenity. To qualify, the resort must have no fewer than 275 guest rooms under common ownership at the time of application and already offer substantial year-round recreational guest amenities on its premises. In addition, the category 3 licensee must not be physically located within 15 miles of any other licensed slots casino. Those

permitted to utilize a Category 3 casino include overnight guests, patrons of one or more of the amenities, authorized employees, and individuals holding a Board approved and valid seasonal or annual membership to use one or more amenities at the resort. In 2007, the Board reopened the application process for Category 3 licenses and received four applications for the two available licenses. However, two of the applicants, Vacation Charters, Ltd., a/k/a the Resort at Split Rock in Lake Harmony, Carbon County and CE-Palace, LP, a/k/a the Palace Inn in Monroeville, Allegheny County, later withdrew.

With respect to the two remaining applicants, the Board, during the last year, established a schedule of public input hearings within the municipality in which each applicant plans to locate its gaming facility and completed background investigations on all applicants and on each individual involved in the application. In October 2008, the Board held licensing hearings to determine the suitability of each applicant to hold a license. The remaining applicants are the Bushkill Group, Inc., operating the Fernwood Hotel and Resort in Bushkill, Monroe County, and the Valley Forge Convention Center Partners, L.P., which operates the Valley Forge Convention Center in King of Prussia, Montgomery County. Now, that the suitability hearings have been completed, the Board is in a position to deliberate and consider a public vote on the awarding of these licenses. The Board's final decision can include awarding both licenses, awarding just one, or not awarding either to these particular applicants.

### **Revenue and Distribution**

Only seven of fourteen planned casinos are up and running; and, as of December 31, 2008, only 16,712 of an authorized 61,000 slot machines are operational including those operating out of temporary facilities. Nevertheless, revenues from slots gaming have exceeded the expectations of opponents and proponents alike. More specifically, legalized slot gaming has produced over \$2 billion in tax revenue including \$550 million derived from eleven \$50 million license fees. Once all of the casinos are open and operating, the amount of annual tax revenues is expected to exceed \$1.78 billion. In addition construction of the slots casinos is expected to create nearly 24,000 construction jobs and 12,000 permanent jobs. To date, more than 4,600 jobs have been created at Pennsylvania's casinos.

On the other hand, general property tax relief, in particular, has been slower in materializing than many would have liked. By law, the fund from which property tax relief is granted needed to accumulate \$570 million dollars before such relief could be forthcoming. On April 15, 2008, Budget Secretary Michael Masch announced that nearly \$613 million in broad based property tax relief would be granted from slots tax revenues in 2008 thereby reducing annual statewide school district property taxes by ten percent, averaging \$169 per household. Also, Masch stated an additional \$48.5 million would be provided to target property tax or rent relief to Pennsylvania's senior citizens under an expanded property tax/rent rebate program that had previously doubled the number of senior citizens eligible to participate. Philadelphia's share of the fund (\$86.6 million) is used to reduce the wage tax rather than the property tax. As a result of this funding, Philadelphia's resident wage tax is projected to decrease from 4.169 percent to 3.93 percent in 2009 while the non-resident wage tax is scheduled to decrease from 3.685 percent to 3.50 percent.

Under legislation approved by the General Assembly in 2007, funds for the Philadelphia Convention Center (\$880 million over thirty years) and an arena for the Pittsburgh Penguins (\$225 million over the same time frame) have been earmarked from slots gaming economic development and tourism dedicated revenues while the Pennsylvania Horse Breeders Association reports that there has been a dramatic increase in interest and investment in horse breeding across Pennsylvania because of the new funding from gaming revenue.

### *2009 Revenue Projections*

Factors that will affect 2009 gaming tax revenues include the condition of the economy, the expansion of gaming within the Commonwealth, and competition from other states. Surprisingly, Pennsylvania gaming revenues have remained strong during the current economic downturn. Comparing gross terminal revenues in October 2008 with those from October 2007, Pennsylvania casino revenue increased by about 3 percent which is rather remarkable considering a 13 percent decline in slots revenue in New Jersey during the same period. Meanwhile, "*Casinos on the Las Vegas Strip are showing their worst revenue numbers in years,*" according to CasinoGamblingWeb.com. The website maintains that the United States casino industry has never experienced such a negative economic crunch. Actually, Pennsylvania gross terminal revenues in October 2008 increased by

30 percent over the previous year, but the stated 3 percent increase does not include revenue from casinos that opened after October 2007. It is noteworthy that the increase in slots revenues did not result from a dip in lottery revenues. To the contrary, for the final six months of 2008, Pennsylvania lottery sales increased 1 percent over the same period in 2007 while 30 states experienced a decline in lottery revenues for the period.

Total gaming revenues will undoubtedly increase from an expansion of gaming throughout the state during 2009 as both the Rivers Casino in Pittsburgh and the Sands Casino in Bethlehem open for operation during the summer and the Meadows Racetrack and Casino in Washington County opens a larger, more permanent facility in May. With regard to interstate competition, industry analysts agree that Pennsylvania casinos have had a significant deleterious impact upon New Jersey casino revenues. According to Andrew Zarnett, an industry analyst. *“Pennsylvania’s impact is clearly unquestioned, and that impact will continue to worsen as Pennsylvania grows its slots capacity....”* Now, that Maryland has recently legalized up to 15,000 slot machines at five locations in that state, it is uncertain how many visitors they might draw from Pennsylvania casinos.

#### *Attached*

At the conclusion of this brief are two appendices. The first presents actual numerical revenues from slot machine facilities in Pennsylvania for each of the two prior fiscal years and for the first half of the current fiscal year (until December 31, 2008). In addition, the final column of the chart of Appendix I includes a cumulative total for each category of revenue. Appendix II includes a bar graph and pie chart prepared by the Pennsylvania Gaming Control Board illustrating cumulative historical revenue collections and expenditures from the inception of gaming in the Commonwealth through the end of the third quarter of 2008 (November 14, 2006-September 30, 2008).

Appendix I illustrates that Pennsylvania slot casinos have been paying out close to 91 percent of wagers in payouts to slots players, remarkably favorable odds for the slots industry and well above the state mandated 85 percent minimum mandated payout. Gross terminal proceeds remaining after payouts to players are deducted from wagers are then taxed at approximately 55 percent, a figure highly favorable to Pennsylvania taxpayers. Appendix II illustrates cumulative expenditures of gaming tax revenues for, among others, purposes of: property tax relief for homeowners, horse and harness racing industry development, economic development and tourism promotion, casinos’ host counties and municipalities assistance, financial support of volunteer fire companies, payments for forest reserves, grants to local law enforcement specifically dedicated to illegal slot machine enforcement, and supporting a compulsive and troubled gambling treatment program.

## Appendix I

### Revenues from Slot Machine Facilities in Pennsylvania

Measure	FY 2006-07	FY 2007-08	FY 2008-09 (½)	Total
Wagers	\$5,055,282,637	\$17,288,615,432	\$10,706,695,328	\$33,050,593,397
Payouts	\$4,589,308,103	\$15,792,986,746	\$9,772,737,237	\$30,155,032,085
Promotional Plays <sup>1</sup>	\$11,604,630	\$98,905,736	\$124,260,720	\$234,771,086
Adjustments <sup>2</sup>	\$209,732	\$169,866	\$21,765	\$401,362
Gross Terminal Revenue	\$454,579,636	\$1,404,753,259	\$826,831,511	\$2,686,164,406
State Tax (34%)	\$154,557,137	\$477,616,108	\$281,122,714	\$913,295,959
Local Government Share (4%)	\$18,183,193	\$56,190,130	\$33,073,260	\$107,446,583
Economic Development & Tourism (5%)	\$22,728,991	\$70,237,663	\$41,341,576	\$134,308,230
Race Horse Development	\$54,549,578	\$168,570,391	\$99,219,781	\$322,339,750
<b>Total</b>	<b>\$10,361,003,635</b>	<b>\$35,358,045,332</b>	<b>\$21,885,303,892</b>	<b>\$67,604,352,858</b>

<sup>1</sup> Promotional Plays = Not taxed per statute

<sup>2</sup> Adjustments = Made by Dept of Revenue based on analysis of daily reports through the central control computer system

data source: PA Gaming Control Board

## Appendix II

